A

1910

1920.

App. F. IX-4

Previous References

(Legis)

File No. 36-1910

Serial Nos. 1-4

Later References

M 9159/14

General and Revenue Secretariat.

A collection

Serial Nos. Seven

manuscript **Part B for** June 1913.

SUBJECT

The Mysore Partition Regulation

Manasamany Iyengar
18-11-27

1910

~~Previous Reference~~

File No 36-1910.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

PROCEEDINGS OF THE GENERAL AND REVEUE SECRETARIAT.

For June 1913.

Judicial and Legislative (Legislation).

"A" Collection. Serial No 1-7.

The Mysore Partition Regulation.

Table of contents.

Serial No	Number and date of letter and contents	Page in A Proceedings
1.	To the Registrar, Chief Court. No J 3031 dated 15-4-10. Calls for the opinion of the Chief Court regarding the execution of certain decrees by Presidents of Municipal Councils.	
2.	From the Registrar, Chief Court. No 4540/266 dated 19-4-10. States that there can be no objection to the President of the Municipal Council being appointed a Commissioner to make a partition and suggests th enactment of the Indian Partition Act in Mysore.	
3.	To the Resident in Mysore. No 2084 dated 27-3-11. Forwards a copy of the draft Partition Bill together with a statement of objects and reasons and states that the Bill will be placed before the Legis. Council i due course.	
4	From the First Assistant to the Resident . No 2117 dated 6-4-11. Informs that the Resident sees no prima facie objection th the Bill being laid before the Legis. Council .	
5.	To the First Assistant to the Resident. No Pol 1076 dated 22/24-6-12. Forwards a copy of the Bill as finally adopted by the Legislative Council and requests to do obtain	

sanction of the Govt. of India to its being passed into law.

6. From the First Assistant to the Resident. No 4083 dated 17-7-12.

Informs that the Governor in Council ~~in Council~~** has accorded his consent to the Bill.

7. To the Compiler, Mysore Gazette. No J 4 dated 19-6-13.

Orders the publication of the Bill as Regulation No III of 1913.

T V R.

3

G.R.S.11] 1909-10

GENERAL AND REVENUE SECRETARIAT

~~(Courts)~~ Legislation

NOTES. Legis 36-10

~~Cfs~~ ~~File No. 237-9~~

FILE HEADING.

~~Execution of decrees by Presidents of~~ Municipal Councils / The Mysore Partition Regn

From

No.	Dated	Received

Diary No.	Enclos.	Spare Copies	Serial No.

BRIEF ABSTRACT OF LETTER.

NOTES AND ORDERS.

4

NOTES—First sheet

GPB—30,000—3-4-07.

SUBJECT No. 32.

Execution of certain civil decrees by Presidents of Municipal Councils.

Messrs. Venkatakrishniah and M. C. Rangiengar, Mysore City Municipality.

Summary of discussion.—Decrees passed by civil courts for the partition of houses or building sites within municipal limits should be transferred to the President of the Municipal Council for execution as commissioner. The President may be given power either to effect a partition as decreed, if such partition does not contravene any building bye-laws, or to assign the property itself to one and cause compensation in money to be paid to the other or others of the parties entitled to shares under the decree.

Reply of Government.—Noted for consideration.

27
Ch 237 e
Legis 36-101

bited. The opinion of the Chief Court may perhaps be obtained. Draft fwd

Secs. SN
23-3-1910

2) The matter is under consideration in a way by the Select Committee on the C. P. Bill But there is no harm in inviting the opinion of the Chief Court also in the meanwhile

24/3/10 SH

3) We may refer the matter to the Select Committee for consideration when the Bill is taken up. The most we can do is to invite opinions on the subject - Secretary

Lee 1

28/3/10

4 S&C 29/3/10

SH 31/3/10

Opinion has not been received already

SH

Subd 24/3/10

The following opinions have been recorded on the subject

Chief Judge:- I fail to see what advantage would result

Mr. Justice Sethu:- With the introduction of the Partition Act V of 1893, serve the purpose better

Mr. Justice Krishna Rao:- The proposal made is practically in force in the Civil and Military Station of Bangalore used to send such decrees invariably to the President appointing him Commissioner for the purpose, and the result has been excellent

The opinion of the Chief Court as at present constituted may perhaps be obtained, and that officially too Subd for order

4 C3
24/3/10

SN 26/3/10

G. R. S. 12]
General and Revenue
Secretariat.

Legn 36 of 1910-11

~~Go~~ File No. ~~237~~ of 190 9-10

Serial No.	
1608 1.4.10	May be referred to the Select Committee for considering the Supr Court Procedure Code and also to the Privy Council. P. Pillai 1/4/10
3200 2.4.10	~~Sub Under~~ Let me see this Partition Act referred to. I believe this subject was considered in the Select Committee already (?) 1/4/10 4/4/10
6 7	Submitted Vol. VI of the unrepealed Acts of the Governor General of India in Council containing the Partition Act IV of 1893 (Vide page 93) & thereafter put up S.V.S. 5/4/10 5/4/10 5.4.10
7 7	The subject may be referred again — 5.4.10 8/4/10

NOTE—Contn. sheet.

BPG—55,000—27-4-09

G. R. S. 12]
General and Revenue
Secretariat.

Legis 36 A/1910-11
~~G~~ File No. ~~237~~ of 1909-11

4 4

Serial No. 4/Legislative C.

11/4/10 S.H. Srinivasaya

1717
11.4.10

10) 9) Jury opinion is already recorded
K.P. Rathnavelu Mudaliar
11/4/10

10) Issue
Balasundaram Iyer
11/4/10

S.H. 1/4/10

Stated 1 To the Registrar, Chief Court
No. J. 3031 of 15.4.1910
calls for the opinion of the Chief Court regarding the execution of certain decrees by Presidents of Municipal Councils

Stated 2 From the Same Officer No. 1910 Dy. No. 266 of 19.4.10
States that there can be no objection to the President of the Municipal Council being appointed a Commissioner to make a partition, and suggests the enactment of the Indian Partition Act in Mysore

J. J.

NOTE—Contn. sheet.

BPG—55,000—27-4-09

G. R. S. 12]
General and Revenue
Secretariat.

Ligs 36 of 1910 - 17

~~File No. of 190~~ - 60

5

Serial No.

11) Subd for orders ~~with~~ / As to the Lahthr Act
& Secy SN Vol. Mesrs Sie. p. 43 of the Volume printed)
26.4.1910

12) The Appointment of the President was Commenced by the Court & Opinion the objection that parties may Contest this award

13) The Lr Secretariat matter will not last week and this may be rejd & then for Endorsement, with the light of the views Expressed by the Ch. Ct

S Srinivasaya
27/4/10

(2nd C) 14/ Yes.
Srinivasayya
29/4

15) Note for dis cussion
S C
Srinivasayya

Sig ch 30/4
30/4/10

8

NOTE—Contn. sheet.

GPB—55,000—27-4-09

Serial No.

7) The Select Committee considered the question & recommended the introduction of the Partition Act & the Indian

17) A draft Bill with a statement of objects and reasons is submitted for approval

YKS 18/1/11

SN (11) 19/1/11

10 (1) Type the draft Bill

19 (2) Putup a copy of the Statement of objects & reasons and of the Report of the Select Committee and of the proceedings of the British Indian Council

[For ref: Le footnote on p. 93 of the volume putup. I have not yet sanctioned the Objects & Reasons]

S. Subramaniya Iyer 16/1/11

(2) Typed 20/1/11

Typed draft Bill compared and put up

S. V. S. 19/1/11

SN (11)

a draft Bill together with a Statement of objects and Reasons

9

NOTE—Contn. sheet.

GPB—55,000—27-4-09

Serial No.

and draft of a Do to the Rest are put up.
D/ The Statement of Objects and Reasons Explains the necessity for the bill
The draft is based entirely on the British Indian Act.
Drafts may be settled

27/1/11

R

Drafts 2nd D

1380 Drafts adpd by 2nd Council 27.1.11

MJ

25 Dec

9.94 (Dood)
30.1.11

28/1/11

28/1/11

10

Legis 36 of 1910 - 11 88

Submitted to His Highness.

25. I submit herewith a draft Bill in regard to the partition of immovable properties not paying revenue to Government. The Bill is based on the provisions of the Partition Act, IV of 1893, in force in British India, and is intended to give discretionary powers to Civil Courts not to partition such property in circumstances where it is considered inexpedient to do so.

"Leave for approval"

26. The draft bill is the outcome of a representation made in the Representative Assembly of 1909, when the impossibility of partitioning small houses without some times contravening municipal building bye-laws and sanitary requirements, was brought to notice. Both the Chief Court and the Select Committee on the Civil Procedure Bill have recommended the adoption of the British Indian Act.

L

hu.

T. Ananda Rao
10 Feb 11

11

Legis 36 of 1910-11

Record of Cases submitted for the Orders of His Highness the Maharaja.

Subject.

Draft Bill in regard to the partition of immovable properties not paying revenue to Government.

Order.

27. Approved

K.R.W

9/3/11

28 Secy

Col

III

15/3/11

15/3/11

15/3

16/3/11

[R.S. 12]
General and Revenue Secretariat.

Legs File No. 36 of 1900-11

Serial No.	
	D. O. No. [redacted] dated 2nd November 1911
73	No. 1 28/3/M. [redacted] dated 2nd November 1911
	From the Hon'ble Col. Hugh Daly C.S.I. Chief Commissioner Mysore Residency Mysore
	To Chief Secretary to Government
	Forwards a copy of the draft Mysore Partition Bill together with a statement of objects and reasons and intimates that the bill will be placed before the Mysore Legislative Council in due course.
74	D. O. No. 2117 dated 6th November 1911
	From H. A. Keeson Esq. Resident in Mysore
	To Chief Secretary to Government
	Informs that H.H. the Maharaja has no objection to the Bill being laid before the Legislative Council as proposed.
(18)	Submitted.
	S.V.S. 5/8 Noted.
	10/4/11 The Statement of Objects and Reasons may be required to be laid before the Council. Perhaps the Secretary to Government in the Legislative Department will be good enough to see that this is done.
	S. No. (45) IV (1) 30 Yes. I shall submit the matter personally tomorrow.
	10/4/11 S. Hayavadana Rao
	10/4/11

NOTE—Contn. sheet.

GPB—55,000—27-4-[illegible]

(10 11

G. R. S. 12]

General and Revenue Secretariat.

File No. 86 of 1910-11

Serial No	
	86 The Bill does not seem to be one requiring the sanction of the Govt of India. It does not affect in any way the provisions of either the Civil Procedure Code or the Land Rev Code. It is only supplementary to the provisions of the former Enactment. The Select Committee have reported that no changes are called for in the Bill. It may be passed finally at the next Sitting of the Leg Council.
	Yours sincerely etc
	20/5/12
	32 I am inclined to agree — though perhaps there is some reason to say that the Civil Procedure Code provisions are modified. However the procedure herein provided is permissive, this contention may & not be sound.
	20/5/12
	To be on the Safe Side

[Nor does it repeal or modify any Act introduced prior to the Rendition vide Clauses 19 & 20 of the Instrument of Transfer

Personally inclined to Dewan 22/5/12

1482 22-5-12 Dewan

22/5/12

NOTE—Contn. sheet.

GPB—20,000—20-1-12

G. K. S. 124

General and Revenue Secretariat.

Leg File No. 86 of 1910-11

(# 12)

Serial No.	
	it is better to write an seek the sanction of the Government of India in the course of the Financial year
	29/6
34	The Bill as emanated from the Select Committee was considered by the Council at the meeting held on the 1st June 1912 when it was resolved to take up and pass the Bill at a subsequent meeting of the Council in the event of obtaining the sanction of the Govt. of India as directed above. Draft letter to the Secretary is now submitted for approval. 10/6/12
	35) Please make a fair copy as revised and submit.
	15
	10/6/12
	36) Submitted with a fair copy of the draft. S.V.S. 10/6/12
	37) May be appd. 11/6/12
	38) 10/6/12
	39) 10/6/12
	40) 10/6/12
	41) 10/6/12
	42) 10/6/12
	43) 15/6/12
	44) 15/6/12
	45) 15/6/12
	46) 15/6/12
	47) 15/6/12
	48) 15/6/12
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	96) 15/6/12
	97) 15/6/12
	98) 15/6/12
	99) 15/6/12
	100) 15/6/12

1806
15-6-12

NOTE—Contn. sheet.

GPE—20,000—20-1-12

R. S. 12]

General and Revenue Secretariat.

Legis File No. 36 of 1911-12

Serial No.	
	38 Draft. addn. Ajmer Laws Letter and Enclosure 21. June 12
	39 Draft. Ajmer Laws Letter and Enclosure 23/6/12
5	No. Pol. 1076 dated 22/24/6/12 To the F.A. Resident Forwards a copy of the draft to amend the law relating to partition in Mysore as finally adopted by the Legis. Cl. and requests to obtain sanction of the Govt. of India to its being passed into law.
6	No. 4083 dated 17/7/12 From the F.A. Resident Informs that the Governor General in council has been pleased to accord his consent to the Bill on the usual understanding about reservation of power and authority vested in him by Art. 19 of the Instrument of Transfer

279.

40 Submitted 23/7/12 — 41 Submitted 20/7/12 — 42 Submitted 20/7/12

NOTE—Contn. sheet.

25 noted 24/7/12 — 22/7/12

GPB—20,000—20-1-12

R. S. 12]

g 180

13
14

General and Revenue Secretariat.

Legis File No. 36 of 1910-11

Serial No.	
	(4) Submitted
	The sanction of the Govt. of India was communicated
Flag S	by the Residency on 17/7/12
	and the Bill was placed
	again before the Legislative
	Council and finally passed
Flag Q	by them on 4/4/13. His Highnes
	approval for the Bill being
	promulgated into law has to
	be obtained One slight
	alteration has to be made, the
	date 1912, inserted by the the year of the Regulation
may be altered	Legislative Council at the
H.V.N.	meeting on 17-7-12 has to be
Has	changed into 1913, as the
	Bill was passed only at the
	meeting held on 4/4/13.
	(3) The copy of the Bill has to
Flag W	be certified by the Dewan as
	usual after obtaining the sanction
	of His Highness.
	S.V.S.
	58 SV
	22/4/13
	S.P. Rajagopalachari
	(5) Dewan has
	the 15th
	SOR
	17/5
	H.V. Nanjundayya
	17/5/13

3140
19.5.13

NOTE—Contn. sheet.

GPR—65/000—17-6-12

15

Submitted to His Highness.

44

I solicit His Highness' sanction to the promulgation as law of the Partition Bill as finally passed by the Legislative Council at the meeting held on the 4th April 1913.

M. Visvanatha
7th June 1913

18

V.T.O

Record of Cases submitted for the Orders of His Highness the Maharaja

Subject.

Promulgation of the Partition Bill as law in Mysore.

Order.

No. 1042

47 Sanctioned
KKW
11/6/13

48 Sanctary
11.6.13 dc

49 B III
LB 13/0

19

Leer
14/6

50 16/ draft ode
S.P. Rajagopalan clerk
17/6

Jurisdiction 100: 8/12 Regs File 17

R. S. 12]

General and Revenue Secretariat.

Régs File No. 36 of 1910-11

Serial No.	
4	Subd. with an order publishing the Regn. 5 U.S. 19/6/13 SPM ayagolsalacheri 19/6
	Camp 20/4 & 19/6/13 To the Compiler Mysore Gazette Orders the publication of the Bill which received the assent of His Highness the Maharaja on the 11th June 1913 as Regn. III of 1913 Submitted Spare copies of the Regn. 10 copies have been received and have to be sent to the Residency as usual. A draft forwarding the same is herewith put up. 24/7/13 25/7/13
	A Rec 7/8/13
	20 Issue 25/7

NOTE—Contn. sheet.

No. 4540/266. Legis 360 of 1911-12 Serial 2 Bangalore, 19th April 1910

From

The Registrar of the
Chief Court of Mysore

To

The Offg: Secretary to the
Government of Mysore
Genl: & Rev: Departments.

Sir

With reference to your No. J. 3031 dated 15th Instant, calling for the opinion of the Chief Court re the Presidents of the Municipal Councils being given certain powers as regards the execution of certain partition decrees of Civil Courts, (Subject No. 32 of Proceedings of the representative Assembly 1909) I am directed to state that there can be no objection to the Presidents of the Municipal Council being appointed Commissioners to make a partition, but under the law as it stands, it would not be open to the Commissioners to allot the whole of the property to one person. If there

there so any strong feeling on the subject, the Government would be well advised to enact the British Indian Partition Act 1893. It would then be open to the Court, on a request made in that behalf, to direct a sale instead of passing a decree for partition.

I have the honor to be,
Sir,
Your most obedient Servant,
(Sd) Illegible
Registrar.

EJ.

Legs 36 of 1910-11
Serial 3

Bangalore
27. Mar 11

Draft D.O.

D.O.No. 2084/En 3

To The Hon'ble the Resident in Mysore

My Dear sir,

I enclose herewith a copy of a Bill relating to the law of partition with a statement of objects and reasons. The Bill is the result of the recommendation of the Select Committee that considered the Civil Procedure Bill and is intended to meet the representation of the members of the Representative Assembly for the Mysore City where great hardship is said to have been felt owing to the rigid provisions of Section 396 of the Civil Procedure Code (Rule 14 of Order XXVI of the new Code) under which a Court is bound to divide the property into as many shares as there are claimants, irrespective of the nature of the property or of its extent or value.

The bill is based on the Partition Act of 1893 of British India and its chief features are explained in the statement of objects and is intended to place it before the Legislative Council in due course.

Yours sincerely

(Dewan)

To The Hon'ble Col. Hugh Daly C.S.I., C.I.E.

vide remarks of the Committee appointed under Rule 14 of O XXVI of the First Schedule of the Code of Civil Pro. Bill, page 8 of the Report (Copy enclosed).

2 Copies of the Bill & Statement of objects & Reasons & one copy of D.O. made B.R. 14/3/11

23

22

A Bill to amend the law relating to Partition in Mysore

Preamble. Whereas it is expedient to amend the law relating to Partition; His Highness the Maharaja is pleased to enact as follows:-

Short title, extent and commencement. 1. (i) This Regulation may be called, The Mysore Partition Regulation 19**. "

(2) It extends to the whole of Mysore: and (3) It shall come into force at once.

Savings. But nothing herein contained shall be deemed to affect any law providing for the partition of immoveable property paying revenue to Government.

Vide Section 192 Mysore Land Revenue Code, 1966

Power to Court to order sale instead of division in partition suits. 2. Whenever in any suit for partition in which, if instituted prior to the commencement of this Regulation, a decree for partition might have been made, it appears to the court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein, or of

any

23

any other special circumstance, a division of the property cannot reasonably or conveniently be made, and that a sale of the property and distribution of the proceeds would be more beneficial for all the shareholders, the court may, if it thinks fit, on the request of any such shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds.

Procedure when sharer undertakes to buy.

23. (1). If, in any case, in which the court is requested under the last foregoing Section, to direct a sale, any other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, the Court shall order a valuation of the share or shares in such manner as it may think fit and offer to sell the same to such shareholder at the price so ascertained, and may give all necessary and proper

25

directions

25

sale of such share to such shareholder and may give all necessary and proper directions in that behalf.

(2). If, in any case, described in sub-section (1), two or more members of the family being such shareholders severally undertake to buy such share, the Court shall follow the procedure prescribed by sub-section (2) of the last foregoing section.

Representation of parties under disability.

5. In any suit for partition, a request for sale may be made or an undertaking, or application for leave, to buy, may be given or made on behalf of any party under disability by any person authorised to act on behalf of such party in such suit, but the Court shall not be bound to comply with any such request, undertaking or application, unless it is of opinion that the sale or purchase will be for the benefit of the party under such disability.

27

Reserved bidding and bidding by shareholders.

6. (1) Every sale under Section 2 shall be subject to a reserved bidding and the amount of such bidding shall

be

26

be fixed by the Court in such manner as it may think fit and may be varied from time to time.

(2). On any such sale, any of the share-holders shall be at liberty to bid at the sale on such terms as to nonpayment of deposit or as to setting off or accounting for the purchase-money or any part thereof instead of paying the same as to the Court may seem reasonable.

(3) If two or more persons, of whom one is a shareholder in the property, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the shareholder.

Procedure to be followed in case of sales.

17. Save as hereinbefore provided, when any property is directed to be sold under this Regulation, the procedure prescribed therefor by rules made by the Chief Court in this behalf from time to time, shall, as far as practicable, be adopted. Until such rules are made

28

made, the procedure prescribed in the Code of Civil Procedure in respect of sales in execution of decrees shall be followed.

Orders for sale to be deemed decrees.

8. Any order for sale made by the Court under Section 2, 3 or 4 shall be deemed to be a decree within the meaning of Section 2 of the Code of Civil Procedure.

Saving of power to order partly partition and partly sale.

9. In any suit for partition, the Court may, if it shall think fit, make a decree for a partition of part of the property to which the suit relates and a sale of the remainder under this Regulation.

Application of Regulation to pending suits.

10. This Regulation shall apply to suits instituted before the commencement thereof, in which no scheme for the partition of the property has been finally approved by the Court.

Offg. Secretary to Government

S.R.N./128. 19.1.11

Statement of Objects and Reasons.

The provisions contained in Section 396 of the Code of Civil Procedure regulate the mode of effecting a partition of immovable property not paying revenue to Government in execution of decrees of Civil Courts. Under these provisions it is incumbent on the Courts to award a share in the property to each one of the sharers though under certain circumstances to equalise the value of such shares money compensation can be awarded in addition. It has been represented that a division of the property into as many shares as there are parties entitled to a share is, at times, impracticable and that in the beneficial interests of the parties themselves it is desirable that the Court must possess a discretion to sell the property and divide the proceeds. Several such cases have occurred in the City of Mysore. Petty houses where not more than one family can reside have had to be partitioned off and divided among several co-owners. with the result that free access to light and air is

shut

29

shut off and the house is [illegible]

rendered [illegible] insanitary.

To provide against such evils, Government have thought it desirable to adopt the recommendation of the Select Committee that considered the Civil Procedure Bill now before the Legislative Council, and the Bill ~~now published~~ is the outcome of this decision. It is based on the Partition Act of British India of 1893 and enables (Clause 2) the Courts to sell, the property sought to be ~~divided~~ partitioned under certain circumstances and ~~divide~~ distribute the proceeds. The sale is to be ordered only when parties interested in at least one-half of the property apply (~~Cl. 2~~) and when the Court is satisfied that it is to the interests of all the parties that the property should be sold.

31

If any [illegible] of the co-sharers are reluctant to have the property sold it is open to them (clause 30) to buy in the shares of the other parties at a valuation to be made by the Court and a similar right is also given (clause 40) in cases where a stranger to the family having acquired a share in the family dwelling house sues for partition.

30

The interests of the parties are further protected by ~~Column~~ Clause 6 (3) which enacts that where at the sale the same bid is offered by several ~~parties~~ persons, the bid of a co-sharer if there is ~~one~~, shall be accepted as the final bid.

Clause ~~5~~ 6 (1) requires that an upset price shall be fixed on each property at the sale in order that it might not be sold for inadequate prices.

The provisions of any special law regarding partition of immovable property paying revenue to Government (vide Section 265. C.P.C. and Sections. 122 and 123, Mysore L.R. Code) are not affected by the Bill.

32

Legis 36 of 1910-11 Serial 4 & 4 2033.

D. O. No. 2320-2

Mysore Resident's Office,

Bangalore, the 6th April 1911.

My dear Dewan Sahib

I am desired to acknowledge the receipt of your D.O. letter No. 2084, dated the 27th March 1911, forwarding a copy of a Bill to amend the law relating to Partition in Mysore, and in reply, to say that there is no objection to the Bill being laid before the Legislative Council as proposed.

Yours Sincerely

F. B. Wardlaw

T. Ananda Rao Esqr., C.I.E.,
Dewan of Mysore.

33

Fair copy of the draft

Legis 36-10 serial 32

To The F. A. Resident in Mysore

Bangalore

Pol: No. 1076/Eon 2 D 22/24-6-12

2/6

(512)

I am directed to forward herewith a copy* of a Bill to amend the law relating to partition in Mysore and to state as follows:-

* with a spare copy

⊗ vide enclosure to D.O. No. 2084/Sn 3 dated 27th March 1911

The provisions contained in ~~Section 396~~ Rules 13 & 14 of Order XXXVI of the Code of Civil Procedure regulate the mode of effecting a partition of immovable property not paying revenue to Government, in execution of decrees of Civil Courts. Under these provisions it is incumbent on the Courts to award a share in the property to each one of the sharers though under certain circumstances, to equalise the value of such shares, money compensation can be awarded in addition. It has been represented that a division of the property into as many shares as there are parties entitled to a share is, at times, impracticable and that in the interests of the parties themselves it is desirable that the Court must possess a discretion to sell the property and divide the proceeds. Several such cases have occurred in the City of Mysore. Petty houses where not more than one family can reside have had to be partitioned off and divided among several co-owners, with the result that free access to light and air is shut off and the house is rendered insanitary.

To provide against such evils, ~~Government~~ the Durbar have thought it desirable to adopt the recommendation of the Select Committee that considered the Civil Procedure Bill and the Bill is the outcome of this decision. It is based on the Partition Act of British India of 1893 and enables (clause 2) the Courts to sell under certain circumstances the properties sought to be partitioned and distribute the proceeds. The sale is to be ordered only when parties interested in at least one-half of the property apply and when the Court is satisfied that it is to the interest of all the parties that the property should be sold.

present since passed as law

If any of the co-sharers are reluctant to have the property sold it is open to them [clause 3 (1)] to buy in the shares of the other parties at a valuation to be made by the Court and a similar right is also given [clause 4 (1)] in cases where a stranger to the family, having acquired a share in the family dwelling house, sues for partition. The interests of the parties are further protected by clause 6 (3) which enacts that where at the sale the same bid is offered by several persons the bid of a co-sharer, if there is one, shall be accepted as the final bid.

Clause 6 (1) requires that an upset price shall be fixed on each property at the sale, in order that it might not be sold for inadequate prices.

The provisions of any special law regarding partition of immovable property paying revenue to Government (*vide* section ~~265~~ 265, Civil Procedure Code and sections 122 and 123, Mysore Land Revenue Code) are not affected by the Bill.

The Bill was placed before the Legislative Council and has been adopted after consideration by that body.

~~the 1st June 1912~~ 33

I am now to request that the sanction of the Government of India may be obtained for the Bill as adopted by the Legislative council being passed into law, as the provs of the bill to some extent modify the laws of Civil Procedure contained in the Code; I have &c

Offg. Secretary to Govt

Sec?

35

34

A Bill to amend the law relating to Partition in Mysore.

Whereas it is expedient to amend the law relating to Partition; His Highness the Maharaja is pleased to enact as follows :—

Preamble.

Short title, extent and commencement.

(1) This Regulation may be called "The Partition Regulation, 19 ".

(2) It extends to the whole of Mysore; and

(3) It shall come into force at once. But nothing herein contained shall be deemed to affect any law providing for the partition of immovable property paying revenue to Government.

Savings.

Power to Court to order sale instead of division in partition suits.

2. Whenever in any suit for partition in which, if instituted prior to the commencement of this Regulation, a decree for partition might have been made, it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein, or of any other special circumstance, a division of the property cannot reasonably or conveniently be made, and that a sale of the property and distribution of the proceeds would be more beneficial for all the shareholders, the Court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds.

Procedure when sharer undertakes to buy.

3. (1) If, in any case in which the Court is requested under the last foregoing section to direct a sale, any other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, the Court shall order a valuation of the share or shares in such manner as it may think fit and offer to sell the same to such shareholder at the price so ascertained, and may give all necessary and proper directions in that behalf.

(2) If two or more shareholders severally apply for leave to buy as provided in sub-section (1), the Court shall order a sale of the share or shares to the share holder who offers to pay the highest price above the valuation made by the Court.

(3) If no such shareholder is willing to buy such share or shares at the price so ascertained, the applicant or applicants shall be liable to pay all costs of or incident to the application or applications.

Partition suit by transferee of share in dwelling house.

4. (1) Where a share of a dwelling house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the Court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit, and direct the sale of such share to such shareholder and may give all necessary and proper directions in that behalf.

(2) If in any case described in sub-section (1) two or more members of the family being such shareholders severally undertake to buy such share, the Court shall follow the procedure prescribed by sub-section (2) of the last foregoing section.

Representation of parties under disability.

5. In any suit for partition, a request for sale may be made, or an undertaking, or application for leave, to buy may be given or made on behalf of any party under disability by any person authorised to act on behalf of such party in such suit, but the Court shall not be bound to comply with any such request, undertaking or application, unless it is of opinion that the sale or purchase will be for the benefit of the party under such disability.

Reserved bidding and bidding by shareholders.

6. (1) Every sale under section 2 shall be subject to a reserved bidding and the amount of such bidding shall be fixed by the Court in such manner as it may think fit and may be varied from time to time

(2) On any such sale, any of the shareholders, shall be at liberty to bid at the sale on such terms as to non-payment of deposit or as to setting off or accounting for the purchase money or any part thereof instead of paying the same as to the Court may seem reasonable.

(3) If two or more persons, of whom one is a shareholder in the property, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the shareholder.

Procedure to be followed in case of sales.

7. Save as hereinbefore provided, when any property is directed to be sold under this Regulation, the procedure prescribed therefor by rules made by the Chief Court in this behalf from time to time shall, as far as practicable, be adopted. Until such rules are made, the procedure prescribed in the Code of Civil Procedure in respect of sales in execution of decrees shall be followed.

Orders for sale to be deemed decrees.

8. Any order for sale made by the Court under section 2, 3 or 4 shall be deemed to be a decree within the meaning of section 2 of the Code of Civil Procedure.

Saving of power to order partly partition and partly sale.

9. In any suit for partition, the Court may, if it shall think fit, make a decree for a partition of part of the property to which the suit relates and a sale of the remainder under this Regulation.

Application of Regulation to pending suits.

10. This Regulation shall apply to suits instituted before the commencement thereof, in which no scheme for the partition of the property has been finally approved by the Court.

STATEMENT OF OBJECTS AND REASONS.

The provisions contained in Section 396 of the Code of Civil Procedure regulate the mode of effecting a partition of immovable property not paying revenue to Government, in execution of decrees of Civil Courts. Under these provisions it is incumbent on the Courts to award a share in the property to each one of the sharers though under certain circumstances, to equalise the value of such shares, money compensation can be awarded in addition. It has been represented that a division of the property into as many shares as there are parties entitled to a share is, at times, impracticable and that in the interests of the parties themselves it is desirable that the Court must possess a discretion to sell the property and divide the proceeds. Several such cases have occurred in the City of Mysore. Petty houses where not more than one family can reside have had to be partitioned off and divided among several co-owners, with the result that free access to light and air is shut off and the house is rendered insanitary.

To provide against such evils, Government have thought it desirable to adopt the recommendation of the Select Committee that considered the Civil Procedure Bill and the Bill is the outcome of this decision. It is based on the Partition Act of British India of 1893 and enables (clause 2) the Courts to sell under certain circumstances the properties sought to be partitioned and distribute the proceeds. The sale is to be ordered only when parties interested in at least one-half of the property apply and when the Court is satisfied that it is to the interest of all the parties that the property should be sold.

If any of the co-sharers are reluctant to have the property sold it is open to them [clause 3 (1)] to buy in the shares of the other parties at a valuation to be made by the Court and a similar right is also given [clause 4 (1)] in cases where a stranger to the family, having acquired a share in the family dwelling house, sues for partition. The interests of the parties are further protected by clause 6 (3) which enacts that where at the sale the same bid is offered by several persons, the bid of a co-sharer, if there is one, shall be accepted as the final bid.

Clause 6 (1) requires that an upset price shall be fixed on each property at the sale in order that it might not be sold for inadequate prices.

The provisions of any special law regarding partition of immovable property paying revenue to Government (*vide* section 265, Civil Procedure Code and sections 122 and 123, Mysore Land Revenue Code) are not affected by the Bill.

Report of the S. C. on the Partition Bill

36

NOTIFICATION.

No. 201—*L. C. dated* 2*nd May* 1912.

Under Rule 40 of the Rules for the conduct of business of the Mysore Legislative Council, the following report of the Select Committee on the Partition Bill is published for general information.

By Order,—
S. HIRIYANNAIYA,
Secretary, Mysore Legislative Council.

Report of the Select Committee on the Bill to Amend the law relating to Partition in Mysore.

We the members of the above Committee have the honour to report that we have carefully considered the Bill and find that it calls for no alteration. We recommend that the Bill be passed in the form in which it was introduced.

Dated 24*th April* 1912.

H. V. NANJUNDAYYA.
D. SHAMA RAO.
C. S. DORASWAMI IYER.
M. C. RANGIENGAR.

Note.—Mr. C. Srinivasiengar, who was also a member of the Select Committee, was unable to be present at the meeting.

38

37

A Bill to amend the law relating to Partition in Mysore.

Whereas it is expedient to amend the law relating to Partition; His Highness the Maharaja is pleased to enact as follows:—

Preamble.

Short title, extent and commencement.

1. (1) This Regulation may be called "The Partition Regulation, 19 ".

(2) It extends to the whole of Mysore; and

(3) It shall come into force at once. But nothing herein contained shall be deemed to affect any law providing for the partition of immovable property paying revenue to Government.

Savings.

Power to Court to order sale instead of division in partition suits.

2. Whenever in any suit for partition in which, if instituted prior to the commencement of this Regulation, a decree for partition might have been made, it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein, or of any other special circumstance, a division of the property cannot reasonably or conveniently be made, and that a sale of the property and distribution of the proceeds would be more beneficial for all the shareholders, the Court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds.

Procedure when sharer undertakes to buy.

3. (1) If, in any case in which the Court is requested under the last foregoing section to direct a sale, any other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, the Court shall order a valuation of the share or shares in such manner as it may think fit and offer to sell the same to such shareholder at the price so ascertained, and may give all necessary and proper directions in that behalf.

(2) If two or more shareholders severally apply for leave to buy as provided in sub-section (1), the Court shall order a sale of the share or shares to the shareholder who offers to pay the highest price above the valuation made by the Court.

(3) If no such shareholder is willing to buy such share or shares at the price so ascertained, the applicant or applicants shall be liable to pay all costs of or incident to the application or applications.

Partition suit by transferee of share in dwelling house.

4. (1) Where a share of a dwelling house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the Court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit, and direct the sale of such share to such shareholder and may give all necessary and proper directions in that behalf.

(2) If in any case described in sub-section (1) two or more members of the family being such shareholders severally undertake to buy such share, the Court shall follow the procedure prescribed by sub-section (2) of the last foregoing section.

Representation of parties under disability.

5. In any suit for partition, a request for sale may be made, or an undertaking, or application for leave, to buy may be given or made on behalf of any party under disability by any person authorised to act on behalf of such party in such suit, but the Court shall not be bound to comply with any such request, undertaking or application, unless it is of opinion that the sale or purchase will be for the benefit of the party under such disability.

Reserved bidding and bidding by shareholders.

6. (1) Every sale under section 2 shall be subject to a reserved bidding and the amount of such bidding shall be fixed by the Court in such manner as it may think fit and may be varied from time to time.

(2) On any such sale, any of the shareholders shall be at liberty to bid at the sale on such terms as to non-payment of deposit or as to setting off or accounting for the purchase money or any part thereof instead of paying the same as to the Court may seem reasonable.

(3) If two or more persons, of whom one is a shareholder in the property, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the shareholder.

Procedure to be followed in case of sales.

7. Save as hereinbefore provided, when any property is directed to be sold under this Regulation, the procedure prescribed therefor by rules made by the Chief Court in this behalf from time to time shall, as far as practicable, be adopted. Until such rules are made, the procedure prescribed in the Code of Civil Procedure in respect of sales in execution of decrees shall be followed.

Orders for sale to be deemed decrees.

8. Any order for sale made by the Court under section 2, 3 or 4 shall be deemed to be a decree within the meaning of section 2 of the Code of Civil Procedure.

Saving of power to order partly partition and partly sale.

9. In any suit for partition, the Court may, if it shall think fit, make a decree for a partition of part of the property to which the suit relates and a sale of the remainder under this Regulation.

Application of Regulation to pending suits.

10. This Regulation shall apply to suits instituted before the commencement thereof, in which no scheme for the partition of the property has been finally approved by the Court.

STATEMENT OF OBJECTS AND REASONS.

The provisions contained in Section 396 of the Code of Civil Procedure regulate the mode of effecting a partition of immovable property not paying revenue to Government, in execution of decrees of Civil Courts. Under these provisions it is incumbent on the Courts to award a share in the property to each one of the sharers though under certain circumstances, to equalise the value of such shares, money compensation can be awarded in addition. It has been represented that a division of the property into as many shares as there are parties entitled to a share is, at times, impracticable and that in the interests of the parties themselves it is desirable that the Court must possess a discretion to sell the property and divide the proceeds. Several such cases have occurred in the City of Mysore. Petty houses where not more than one family can reside have had to be partitioned off and divided among several co-owners, with the result that free access to light and air is shut off and the house is rendered insanitary.

To provide against such evils, Government have thought it desirable to adopt the recommendation of the Select Committee that considered the Civil Procedure Bill and the Bill is the outcome of this decision. It is based on the Partition Act of British India of 1893 and enables (clause 2) the Courts to sell under certain circumstances the properties sought to be partitioned and distribute the proceeds. The sale is to be ordered only when parties interested in at least one-half of the property apply and when the Court is satisfied that it is to the interest of all the parties that the property should be sold.

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Clause 6 (1) requires that an upset price shall be fixed on each property at the sale in order that it might not be sold for inadequate prices.

The provisions of any special law regarding partition of immovable property paying revenue to Government (*vide* section 265, Civil Procedure Code and sections 122 and 123, Mysore Land Revenue Code) are not affected by the Bill.

Vol No 87 dated 18.7.12
Legis 36 of 1910-11
Sec 26.

No. 4083, J/180 39

FROM

~~P. B. WARBURTON, Esq., I. C. S.,~~
THE FIRST ASSISTANT TO THE RESIDENT IN MYSORE.

To

The Dewan of Mysore,

Dated Bangalore, 17 July 1912.

SIR,

I am directed to acknowledge the receipt of Mr. Srinivasaiengar's letter No. 1076 Pol., dated the 22nd June 1912, forwarding for the sanction of the Government of India the draft of a Bill which the Darbar propose to enact to amend the law relating to partition in the Mysore State. 26

2. In reply, I am to state that the Governor General in Council has been pleased to accord his consent to the draft Bill on the understanding that he retains over it the power and authority which vests in him by virtue of Article 19 of the Instrument of Transfer.

I have the honour to be

Sir,

Your most obedient servant,

First Assistant Resident

R. O. 2.—R. P. B.—8-1911.—3,000.

G.R.S. 28]

Ordering the publication of the Partition Regn. LCO

Legis File No. 36-10
Serial No. 7

Translate

Diary No. of letter replied to

Proceedings of the Government of His Highness the Maharaja of Mysore

GENERAL AND REVENUE SECRETARIAT.
( )

READ—

the 191

Date of issue 19/6/13

Signed by S. P. Rajagopalachari

State

To the Compiler, Mysore

Camp

ORDER ~~THEREON.~~ No. GL/8[illegible] (Mysore) 9-6-13

To
The Translation Section
for needful.

Ordered that the [illegible] 1.
accompanying Regulation to
amend the law relating to
Partition in Mysore (Regn

over.

SUBJECT.

42

No III of 1913) which received the assent of His Highness the Maharaja on the 11th June 1913 be published in the Part III of the Mysore Gazette in English and Kannada and 200 copies in English and 100 in Kannada be sent to this office and 100 copies in English and 180 in Kannada to the Curator Govt Central Book Depot Bangalore.

Proofs should be sent to this office for approval before publication

(8)

Cpl

Ack to Govt

To

The Compiler Mysore Gazette

GPB—20,000—2-10-11

42

REGULATION No. III of 1913.

A Regulation to amend the law relating to Partition in Mysore.

(RECEIVED THE ASSENT OF HIS HIGHNESS THE MAHARAJA ON THE 11TH DAY OF JUNE 1913.)

Whereas it is expedient to amend the law relating to Partition; His Highness the Maharaja is pleased to enact as follows:—

Preamble.

Short title, extent and commencement.

1. (1) This Regulation may be called "The Partition Regulation, 1913."

(2) It extends to the whole of Mysore; and

(3) It shall come into force at once. But nothing herein contained shall be deemed to affect any law providing for the partition of immovable property paying revenue to Government.

Savings.

Power to Court to order sale instead of division in partition suits.

2. Whenever in any suit for partition in which, if instituted prior to the commencement of this Regulation, a decree for partition might have been made, it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein, or of any other special circumstance, a division of the property cannot reasonably or conveniently be made, and that a sale of the property and distribution of the proceeds would be more beneficial for all the shareholders, the Court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds.

Procedure when sharer undertakes to buy.

3. (1) If, in any case in which the Court is requested under the last foregoing section to direct a sale, any other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, the Court shall order a valuation of the share or shares in such manner as it may think fit and offer to sell the same to such shareholder at the price so ascertained, and may give all necessary and proper directions in that behalf.

(2) If two or more shareholders severally apply for leave to buy as provided in sub-section (1), the Court shall order a sale of the share or shares to the shareholder who offers to pay the highest price above the valuation made by the Court.

(3) If no such shareholder is willing to buy such share or shares at the price so ascertained, the applicant or applicants shall be liable to pay all costs of or incident to the application or applications.

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4. (1) Where a share of a dwelling house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the Court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit, and direct the sale of such share to such shareholder and may give all necessary and proper directions in that behalf.

(2) If in any case described in sub-section (1) two or more members of the family being such shareholders severally undertake to buy such share, the Court shall follow the procedure prescribed by sub-section (2) of the last foregoing section.

43

Representation of parties under disability.

5. In any suit for partition, a request for sale may be made, or an undertaking, or application for leave, to buy may be given or made on behalf of any party under disability by any person authorised to act on behalf of such party in such suit, but the Court shall not be bound to comply with any such request, undertaking or application, unless it is of opinion that the sale or purchase will be for the benefit of the party under such disability.

Reserved bidding and bidding by shareholders.

6. (1) Every sale under section 2 shall be subject to a reserved bidding and the amount of such bidding shall be fixed by the Court in such manner as it may think fit and may be varied from time to time.

(2) On any such sale, any of the shareholders shall be at liberty to bid at the sale on such terms as to non-payment of deposit or as to setting off or accounting for the purchase money or any part thereof instead of paying the same as to the Court may seem reasonable.

(3) If two or more persons, of whom one is a shareholder in the property, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the shareholder.

Procedure to be followed in case of sales.

7. Save as hereinbefore provided, when any property is directed to be sold under this Regulation, the procedure prescribed therefor by rules made by the Chief Court in this behalf from time to time shall, as far as practicable, be adopted. Until such rules are made, the procedure prescribed in the Code of Civil Procedure in respect of sales in execution of decrees shall be followed.

Orders for sale to be deemed decrees.

8. Any order for sale made by the Court under section 2, 3 or 4 shall be deemed to be a decree within the meaning of section 2 of the Code of Civil Procedure.

Saving of power to order partly partition and partly sale.

9. In any suit for partition, the Court may, if it shall think fit, make a decree for a partition of part of the property to which the suit relates and a sale of the remainder under this Regulation.

Application of Regulation to pending suits.

10. This Regulation shall apply in suits instituted before the commencement thereof, in which no scheme for the partition of the property has been finally approved by the Court.

M. VISVESVARAYA,
Dewan.

26.7.13

G. R. S. 26]

~~Revs~~ File No. 36-10

~~Serial No.~~

Diary No. of letter replied to

Forwarding 10 copies of Regn III of 1913 to the Residency

Pol No. 857 dt 10.

General and Revenue Secretariat

( )

, the 191

To State

The J. A. Resident in Mysore, Bangalore

Date of issue 29. 7. 13 — 5m

Signed by Sir K. Seshasangiah

I am directed to forward hereunto a copy of Regn III of 1913 (A Regn to amend the law relating to partition in Mysore) with nine spare copies and to request you to be so good as to forward one copy to His Highness the

Encl 10

44

over.

SUBJECT.

copied MRV 28/7.

Nizams' Govt as usual

I have &c

Sd

Secretary to Govt

SW
25/7/13

List of enclosures,

10 copies

Copied by

Examined by SW

GPB—25,000—8-8-11.